



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kingcome Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On January 23, 2014 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit. The Tenant stated that on January 08, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

On January 27, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied to keep all or part of the security deposit and to recover the fee for filing this Application for Dispute Resolution. The Landlord stated that on January 27, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents.

On May 05, 2014 the Landlord submitted documents and photographs to the Residential Tenancy Branch. She stated that this evidence was sent to the Tenant, via registered mail, on May 05, 2014. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

On February 12, 2014 and May 09, 2014 the Tenant submitted documents and digital evidence to the Residential Tenancy Branch. He stated that this evidence was sent to the Landlord, via regular mail, on May 08, 2014. The Landlord stated that she regularly checks her mail and she has not yet received this evidence.

The Tenant declined the opportunity to request an adjournment for the purposes of relying on the evidence that Landlord has not yet received. He stated that he is prepared to proceed with this hearing, with the understanding his documentary evidence will not be considered when making a determination in this matter.

Both parties were represented at the hearing. They were provided with the opportunity to ask relevant questions, and to make relevant submissions. At the outset of the hearing the Landlord indicated that she had a witness she wished to call. She was advised that the witness could not be present at the hearing until it was time for him to testify. She was advised that it was her responsibility to ensure the witness was included in the hearing at the appropriate time. The Landlord was given the opportunity to raise additional issues at the conclusion of the hearing, however she did not call her witness at this time.

Issue(s) to be Decided

Is the Landlord entitled to compensation for cleaning the rental unit and repairing/painting the walls?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 15, 2011 and that it ended on December 31, 2013. The parties agree that the Tenant paid a security deposit of \$692.50.

The Landlord and the Tenant agree that the tenancy ended on December 31, 2013. The Tenant stated that he provided the building manager with his forwarding address, via email, on January 23, 2014. The Landlord stated that the Tenant first provided the Landlord with his forwarding address, via email, on January 29, 2014. She reiterated that it was first received on January 29, 2014, even after it was noted that the Landlord provided the forwarding address as a service address on the Application for Dispute Resolution that was filed by the Landlord on January 27, 2014.

The Landlord and the Tenant agree that a condition inspection report was completed at the start of the tenancy, which was signed by the Tenant and an agent for the Landlord. This report, which was submitted in evidence, shows the walls were in good condition at the start of the tenancy.

The Landlord is seeking compensation for damage to the rental unit, in the amount of \$600.00. At the hearing the Landlord stated that \$150.00 of the claim is for cleaning and that the Landlord is claiming \$465.67 for painting.

The Landlord stated that the rental unit required additional cleaning at the end of the tenancy. She stated that the area beside and under the stove required cleaning, behind the fridge required cleaning, and there was grease on the ceiling fan, the "fume hood", and the kitchen counter.

The Tenant stated that he forgot to clean behind the fridge and stove but the rest of the rental unit was left in clean condition. He stated that the person completing the condition inspection report at the end of the tenancy pointed out several places that he thought were "greasy" but the Tenant could not see grease on those surfaces. The Tenant contends that the Landlord has unreasonably high cleaning standards.

The Landlord submitted a letter, dated January 16, 2014, from a manager who inspected the rental unit with the Tenant at the end of the tenancy. In this letter the manager noted that the area beside and under the stove required cleaning; that the area beside and under the fridge required cleaning; and that the kitchen counters were greasy.

The Tenant stated that although the walls were freshly painted at the start of the tenancy, there were several nail holes on the walls which had not been properly repaired prior to the wall being painted. The Landlord stated that the walls were not damaged prior to the start of the tenancy.

The Landlord stated that at the end of the tenancy there were 178 small holes in the wall, most of which were largely the result of hanging art. She contends this is an excessive amount of holes. The Tenant stated that he made approximately 60 holes in the wall by hanging art and that some of the holes being counted by the Landlord were in the wall prior to the start of the tenancy.

The Landlord submitted several photographs of the walls that show the areas in the wall that were repaired by the Landlord, prior to the walls being painted. The Tenant stated that he did not repair any of the repairs depicted in those photographs.

The Landlord and the Tenant agree that the Tenant did repair and paint some holes in the hallway and some areas that had been damaged by tape. The Landlord contends those repairs were inadequate.

The Landlord submitted a letter from an individual who declared he was previously the Chief Instructor of the Finishing Department at a post secondary institute. He declared that he viewed the walls in the rental unit after this tenancy ended and that he counted a total of 178 holes in the walls. He stated that 29 holes had been repaired and repainted, but the resulting repair was inadequate, as the repairs were noticeable. This individual created scale drawings of the damaged walls. Photographs of some of the damage noted in the drawings were submitted in evidence.

The Landlord stated that the rental unit was previously painted in September of 2010. The Landlord submitted an invoice for repairing the walls and the painting the rental unit, in the amount of \$935.55. The Landlord stated that this amount was paid to repair the walls in the unit at the end of this tenancy.

Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37 of the *Act* requires a tenant to leave a rental unit in reasonably clean condition. I find that the Landlord submitted insufficient evidence to show that the Tenant left the rental unit in unreasonably clean condition. In reaching this decision I was heavily influenced by the absence of evidence, such as photographs, that corroborates the Landlord's testimony that the unit required cleaning or that refutes the Tenant's testimony that it was left in reasonably clean condition.

In reaching this conclusion, I placed little weight on the letter from the building manager, dated January 16, 2014, as it is simply another subjective assessment of the cleanliness of the rental unit. In situations where the parties disagree on the cleanliness of the rental unit, I find the Landlord should produce evidence which can be assessed by an independent third party, such as photographs. In the absence of such evidence, I dismiss the Landlord's claim for compensation for cleaning.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. As the Tenant signed the condition inspection report that was completed at the start of the tenancy, in which he agreed that it accurately reflects the condition of the rental unit at the start of the tenancy, I find that I must rely on this report. I therefore find that the walls in the rental unit were undamaged at the start of the tenancy, as is recorded in the report.

In reaching this conclusion, I note that the Tenant submitted no evidence to corroborate his testimony that some holes in the walls had not been properly repaired prior to being painted. I therefore find that the Tenant has not submitted a "preponderance of evidence" that would cause me to disregard the information on this condition inspection report.

I note that the Tenant did not agree that the condition inspection report that was completed at the end of the tenancy accurately reflects the condition of the rental unit at the start of the tenancy. I therefore find that I cannot rely solely on this report when determining the merits of this claim.

Residential Tenancy Branch policy guidelines suggest that a tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage. I concur with this guideline.

I favour the evidence of the Landlord, who contends there were 178 holes in the walls of the rental unit, some of which had been inadequately repaired, over the testimony of the Tenant, who stated there were approximately 60 holes in the walls. In reaching this conclusion I was heavily influenced by the documentary evidence of the former Chief Instructor of the Finishing Department at a post secondary institute. In the absence of evidence to show that this party is biased or that he does not have the expertise claimed, I find that he should be considered a reliable witness and that his declarations are compelling.

Given my experience with these matters, I find this to be an excessive number of holes and I find that the Tenant was required to properly repair those holes, in accordance with section 37 of the *Act*. Although it appears that the Tenant made an effort to repair some of those holes I find, on the basis of the evidence of the former Chief Instructor of the Finishing Department at a post secondary institute, that the repairs that had been made required additional painting. I therefore find that the Landlord is entitled to compensation for repairing the holes in the walls and for repainting.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of interior paint is four years. The evidence shows that the rental unit was previously painted in September of 2010 and the paint was, therefore, approximately 39 months old at the end of this tenancy. I therefore find that the paint in the living room had depreciated by 81.5%, and that the Landlord is entitled to 18.5% of the cost of repairing and repainting the rental unit. I therefore find that the Landlord is entitled to 18.5% of the \$935.55 the Landlord paid to repair and repaint the unit, which is \$173.08.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$223.08, which is comprised of \$173.08 for repairing the walls and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section

72(2) of the *Act*, I authorize the Landlord to retain this amount from the Tenant's security deposit of \$692.50.

The Landlord must return the remainder of the Tenant's security deposit, which is \$469.42. Based on these determinations I grant the Tenant a monetary Order for the amount \$469.42. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 21, 2014

Residential Tenancy Branch

